U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: DEC 15 2010

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Z Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as an instructor. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief that includes several citations to unpublished decisions by this office. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Counsel's specific assertions will be addressed below. For the reasons discussed in this decision, we uphold the director's ultimate conclusion that the petitioner has not established his eligibility for the benefit sought. More specifically, the petitioner relies on projections of future influence in the field rather than submitting evidence that he has any track record of success already.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

As of the date of filing, the petitioner was a Ph.D. student at the College of William and Mary while also serving as a lecturer at Bowdoin College. On appeal, the petitioner submitted evidence that the

petitioner also had an offer for a tenure-track instructor position at the College of the Holy Cross for the 2009-2010 academic year. The petitioner holds a Master's degree in English from Clark University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

On appeal, counsel references a footnote in *NYSDOT,* 22 I&N Dec. at 218, n.4. Specifically, the main text of the decision states: "The labor certification process exists because protecting the jobs and job opportunities of U.S. workers having the same objective minimum qualifications as an alien seeking employment is in the national interest." *Id.* at 218. The decision then includes the following footnote:

> A limited exception to the minimum requirements rule exists, as set forth in Department of Labor regulations at 20 C.F.R. § 656.21a, (A U.S. college or university seeking to fill a teaching position can establish that the alien was found, through a competitive

> recruitment and selection process, to be more qualified that U.S. applicants.) This exception does not apply in this case.[1]

Counsel then discusses the College of Holy Cross' recruitment process prior to offering the petitioner an instructor position. Counsel concludes:

> Clearly, [the petitioner] was found to be "more qualified than U.S. applicants" as a result of a competitive recruitment and selection process. 20 C.F.R. § 656.21a. As the position is one for a college professor, it is this "more qualified" test that applies to the recruitment as verified at footnote 4 of *NYSDOT*. Therefore, the denial by the director based on [the petitioner] having failed to show no "minimally qualified" U.S. workers were able to fill the position is in direct conflict with both the Department of Labor regulations and the finding of *NYSDOT*.

Counsel seriously mischaracterizes *NYSDOT*, 22 I&N Dec. at 218, the role of the Department of Labor versus the role of U.S. Citizenship and Immigration Services (USCIS) and the director's decision.

NYSDOT, 22 I&N Dec. at 218, discusses the Department of Labor's role and the purpose of the alien employment certification process at length. As the alien employment certification process, administered by the Department of Labor, already exists to determine the availability of U.S. workers, the existence of a shortage or the possession of qualifications required for the position cannot serve as the basis for a waiver of that process in the national interest. *Id.* at 218. The decision subsequently reiterates that the "issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor." *Id.* at 221. As USCIS has no jurisdiction to determine a shortage of U.S. workers with the minimum qualifications, any attempt by the director to address that issue would have been in error. In fact, the director correctly made no conclusion as to whether or not such a shortage exists. Instead, the director concluded that any objective qualifications for the position could be listed on an application for alien employment certification and, thus, the petitioner's qualification for the job was not determinative. The director further concluded that the petitioner had not established that the benefits of his skills or background outweigh the national interest of protecting available U.S. workers inherent in the alien employment certification process.

The only logical result of counsel's reliance on footnote 4 is that petitioners seeking a waiver for a teaching position at a college or university have a *greater* burden than the one set forth in *NYSDOT*, 22 I&N Dec. at 217-18. Specifically, the Department of Labor regulation at 20 C.F.R. § 656.18(b) does not require a college or university to show that qualified U.S. workers are unavailable. It can suffice, instead, to show that the alien is the most qualified applicant. If, as counsel claims, the petitioner is, in fact, the most qualified applicant for the position, then the existing Department of Labor regulations already take the alien's situation into account. Counsel has not explained why even this requirement (easily satisfied if the petitioner is, in fact, the best qualified for the position) should be waived solely

[1] The relevant Department of Labor regulation is now 20 C.F.R. § 656.18.

because the alien is the best qualified candidate. Rather, under counsel's logic, the petitioner would need to demonstrate that he would serve the national interest to a greater extent than a more qualified U.S. worker. Nevertheless, we do not interpret footnote 4 as placing a greater burden on those who seek a teaching position at a U.S. college or university. Thus, we will apply the standards set forth in *NYSDOT,* 22 I&N Dec. at 217-18 to the matter before us.

We concur with the director that the petitioner works in an area of intrinsic merit, fresh scholarly analysis of African Diaspora literature. The director did not contest that the proposed benefits of the petitioner's work would be national in scope. On appeal, counsel asserts that the petitioner is teaching students who will "presumably go on to work throughout the United States" and that his "research activities will likewise be shared by scholars nationwide." While education is in the national interest, the impact of a single schoolteacher at the national level is too negligible for purposes of waiving the alien employment certification process. *Id.* at 217, n.3 (using the example of a teacher at an elementary school with no suggestion that the reasoning does not apply to teachers at the secondary or postsecondary level). We are not persuaded that the eventual movement of his students, true for any teacher at any level, demonstrates that his impact will be more than negligible at the national level.

More persuasive with regard to the national scope issue is the potential impact of his research. While the national interest waiver hinges on *prospective* national benefit, however, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. As stated above, the issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

The fact that the petitioner happens to originate from Jamaica and, thus, has cultural experiences similar to others from the Caribbean, is not evidence that he has or will make an impact on the field of African Diaspora literature. If USCIS were to accept that the petitioner's cultural experiences warrant approval of the waiver, USCIS would need to approve the waiver for every Caribbean scholar from the Caribbean. The petitioner has not established that Congress' acknowledgement of

the contributions of those of Caribbean descent in a House Report warrants a blanket waiver for all alien literary scholars from the Caribbean.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

As part of an exhibit labeled "Awards for Excellence in the Field of Endeavor or Nationally or Internationally Recognized Prizes," the petitioner submitted evidence that Bowdoin College set up a travel account to help the petitioner with the costs of attending conferences. Nothing in the record suggests that the college set up this travel account in recognition for excellence rather than as financial assistance for junior faculty to attend conferences. Moreover, the petitioner submitted no evidence that this travel account is recognized beyond Bowdoin College. The Index of Exhibits for the initial submission lists faculty summer research awards, a conference award and the petitioner's positions. The petitioner, however, did not submit these documents. Regardless, the petitioner does not explain how grants, which fund future research rather than recognizing past accomplishments, and employment constitute "awards."

Finally, even if we accepted that the record contained evidence of recognition for achievements and significant contributions to the field from peers or government, professional or business entities, such recognition is one of the six regulatory categories of evidence that can be used to establish exceptional ability pursuant to section 203(b)(2) of the Act. 8 C.F.R. § 204.5(k)(3)(ii)(F). By statute, "exceptional ability" is not, by itself sufficient cause for a national interest waiver. *NYSDOT,* 22 I&N Dec. at 218. Thus, submitting evidence relating to one criterion, or even the requisite three criteria, pertaining to that classification cannot establish that waiving the alien employment certification process is in the national interest. *Id.* at 222.

[redacted] asserts that the petitioner "fulfilled an assignment as an [redacted] in 1997. [redacted] asserts that this journal is "the flagship publication" at UWI. We note that the petitioner received his undergraduate degree from this university. [redacted] explains that as an assistant editor, the petitioner "read, sub-edited and evaluated various manuscripts" for the journal. The record contains no evidence regarding the number of assistant editors the journal utilizes or whether the assistant editors primarily consist of students at UWI. Without additional evidence, the petitioner cannot establish that this position, held before he presented or published any of his work, demonstrates the influence of that work in the field.

The petitioner submitted evidence that he presented his work at Clark University, where he obtained his Master's Degree, and at a conference in Portugal. The petitioner also submitted a copy of his article published in *Caribbean Quarterly* in 1999. In response to the director's request for additional evidence, counsel asserts that the quantity of the petitioner's publications is less important than the quality. Even if true, it is the petitioner's burden to establish the influence of the petitioner's work in the field. Regardless of whether the petitioner's ability to secure publication of his article in *Caribbean Quarterly* while still a graduate student is noteworthy, at issue is the ultimate influence of this work once published and disseminated. The petitioner submitted an article in *Gender and History* by [redacted] that footnotes the petitioner's 1999 article as one of two views on violence against women in lyrics. The petitioner also submitted a dissertation by a student at SIT Jamaica that lists the petitioner's 1999 article as a reference. These two citations cannot demonstrate that the petitioner's publication record is indicative of a track record of success with some degree of influence on the field as a whole.

The remaining evidence consists of reference letters, all from the petitioner's colleagues, friends and neighbors, some of whom have no expertise in the petitioner's field. Primarily, these letters attest to the petitioner's character, the importance of his area of study, his cultural experiences, his talent as a teacher and mentor and the likely impact his dissertation and a hypothetical future book will have once published. While we will discuss a representative sample of these letters in more depth below, these letters fail to explain how the petitioner has already influenced his field beyond his immediate circle of colleagues.

Professor [redacted] discusses the issues arising from diversity facing today's youth and states:

> [The petitioner's] academic investigations informed by such challenges have long enough forced him to proceed to action in his dissemination of findings to and among the high school and university students he has had the privilege to teach. This makes him an invaluable instructor and mentor to members of a young generation whose appreciation of diversity, strength of character, textured sensibility and psychic balance can only result in values of tolerance, mutual respect, understanding and generosity of spirit one to another – all of which many in the academy now see as vital to the spread of knowledge and the development of a world of creative rather than of disintegrative tension.

This florid language, when examined for its ultimate meaning, appears limited to praising the petitioner's personal motivation and style of teaching. This language does not address the relevant issue of how the petitioner's work is perceived in the field beyond the petitioner's immediate circle of colleagues and students. Professor [redacted] goes on to describe the petitioner as a model undergraduate student who completed his Master's degree "with great credit." Professor [redacted] notes that as the editor of [redacted], he published one of the petitioner's graduate papers. Professor [redacted] states:

> [The petitioner's] source of investigation has been the literature of Africa-America and the tremendous insights which this area of African-American creative endeavors provides in the quest for cultural certitude and a sense of self for a people who have survived the anguish over a half a millennium of a form of marginalization that has denied to millions selfhood and a sense of place and purpose.

Once again, this language addresses the importance of the petitioner's area of study rather than explaining how the petitioner himself has influenced this area of study.

In addition, Professor [redacted] discusses the petitioner's personal attributes such as his "intellectual curiosity, capacity for deep-structured analysis, power of concentration and focused energy in the pursuit of knowledge." While Professor [redacted] concludes that these attributes "qualified him to pursue serious graduate work at the Ph.D. level", he does not explain why being qualified to pursue a Ph.D. warrants a waiver of the alien employment certification process in the national interest.

Finally, Professor [redacted] concludes:

> To his further advantage is the rather remarkable grasp he has of the forces which have shaped the Americas in the Hemisphere's development over the past half a millennium and the pivotal role played by the African presence in that shaping, if not in terms of the material achievements, certainly with respect to the sense and sensibility honed throughout the process of severance, suffering and survival. Much of African-American literature speaks to this reality, as does life in general in the Americas. He would be an asset to any teaching programme designed to facilitate participants in making sense of the shifting paradigms and winds of change evidence in the myriad discourses that now challenge all who tenant the Americas towards greater and deeper understanding of self and society. He will be greatly appreciated by his students as well as by colleague researchers like myself.

While we do not question Professor [redacted] subjective opinion of the petitioner's abilities, his letter simply does not provide any examples of how the petitioner's work is already influencing the field. Rather, he speculates that the petitioner is capable of influencing the field in the future.

The record does not contain letters from any of the petitioner's professors at Clark University, where he obtained his Master's degree. [redacted] at Bowdoin College where the petitioner was teaching as of the date of filing, reiterates that the [redacted] published an article the petitioner completed during his Master's studies. Dr. [redacted] however, does not discuss the influence of this article. In fact, none of the references explain how the petitioner's research completed at Clark University has influenced the field.

The petitioner submitted letters from colleagues and parents of the petitioner's students at Mercersburg Academy. For example, [redacted] asserts that the

petitioner is a "superb teacher and researcher" and that many of the school's students "were able to benefit from his gifts as a teacher." Mr. [redacted] concludes that petitioner is a teacher "who has already been making a significant mark on American education through his work at Mercersburg and, more recently, at Bowdoin College." USCIS need not accept primarily conclusory assertions.[2] While these letters attest to the petitioner's skill as a teacher and assert in general terms that it is in the national interest to recruit gifted teachers, we reiterate that it is only the petitioner's research that can provide benefits that are national in scope. None of the letters regarding the petitioner's teaching success at Mercersburg Academy suggest that the petitioner influenced the teaching of those subjects at the national level such as by creating curricula widely adopted or under consideration at multiple independent institutions.

As of the date of filing, the petitioner had completed the requirements for a Ph.D. at the College of William and Mary with the exception of his dissertation. The petitioner did not provide letters from any professors at the College of William and Mary. Several colleagues at Bowdoin College, where the petitioner was teaching as of the date of filing, discuss the petitioner's pending dissertation. These letters speculate as to the petitioner's future impact in the field. For example, Dr. [redacted] a professor at Bowdoin College, explains that the petitioner's dissertation addresses maroon subjectivities in the writings of [redacted] a leading figure in the Harlem Renaissance. Dr. [redacted] asserts that the petitioner's "reading of [redacted] writing is brilliantly original and distinctive, and once it is completed and published, will have a powerful impact on his field of African American literary study." Subsequently, Dr. [redacted] asserts that when the petitioner's dissertation is complete and he secures a position at the College of Holy Cross, "he will be able to revise his research and publish a book that will not only illuminate one of the canonic authors of the Harlem Renaissance but help shift the very terms in which we interpret the field." Once again, while the waiver may promote future contributions by the alien who receives it, the waiver is not designed to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *NYSDOT,* 22 I&N Dec. at 219.

[redacted] asserts that the petitioner's dissertation "needs to be developed and completed" and implies that the petitioner cannot complete his dissertation without permanent residency in the United States. Counsel cites no authority, and we know of none, that suggests the national interest waiver was designed to facilitate the completion of promising dissertations by aliens with no track record of success and influence in the field as a whole.

[redacted] discusses the college's reasons for wanting to hire the petitioner. Regarding the petitioner's scholarly work, Dr. [redacted] asserts that it is an "emergent field, with much of the most interesting work being done by comparatively young scholars." Regardless, it is still the petitioner's burden to demonstrate his influence in this emerging field. Dr. [redacted] concludes that the petitioner's work "has already had an impact" and cites, as examples of this impact, quotes from reference letters from Dr.

[2] *See 1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

[redacted] and a professor at the College of William and Mary on which the College of the Holy Cross relied when considering the petitioner for employment. The two quotes follow:

> [The petitioner's] research gives us what African-American studies has at times yearned for, and at times resided: a diasporic interpretation of the African-American cultural experience itself. [...] [He] is clearly poised to revise an entire series of cultural assumptions. [*Professor* [redacted]]
>
> [The petitioner] is writing the sort of brilliant and bold transnational work we often talk about but rarely do. [*Professor* [redacted] *College of William and Mary*]

Contrary to the characterizations of Dr. [redacted] neither quote explains how the petitioner has already influenced the field beyond his immediate circle of colleagues and students.

The most independent letter is from Dr. [redacted] a senior professor of French Studies at Georgetown University. Dr. [redacted] confirms that the petitioner approached Dr. [redacted] for information about the topographic details of the city of Marseille and has consulted with Dr. [redacted] "on many historical or contemporary local facts which may have inspired the author." Dr. [redacted] concludes:

> Indeed, [the petitioner's] research brings considerable historical and sociological perspectives on the African Caribbean literary experience in the United States. In my opinion, this is the kind of academic contribution that will increase greater understanding of migrant peoples making up the cultural and social fabric of the United States: what better reason to provide [the petitioner] with the necessary authorization to stay here.
>
> In short, I am convinced that his research and PhD dissertation will bring an indubitable impact on the knowledge and understanding of works such as *Home to Harlem, Banjo* or *Banana Bottom.*

The issue is not whether the petitioner's presence in the United States could serve the national interest but whether waiving the alien employment certification process, the normal requirement for a member of the professions holding an advanced degree, is in the national interest. Once again, Dr. [redacted] merely speculates that the petitioner's dissertation, once completed, and a hypothetical book will eventually influence the field. Without evidence of a past track record of success with some degree of influence on the field as a whole, however, such speculation is insufficient grounds for waiving the alien employment certification process in the national interest.

In response to the director's request for additional evidence and again on appeal, counsel cites unpublished decisions by this office as to the significance of letters. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above, from close colleagues, the parents of students, friends and neighbors, primarily contain bare assertions of future national benefit without providing specific examples of how the petitioner has already influenced the field. Merely repeating the legal standard for the benefit sought does not satisfy the petitioner's burden of proof.[3] The petitioner failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

The record shows that the petitioner is respected by his immediate circle of colleagues and students and is pursuing original research in an important area of scholarship. The record, however, contains little in the way of specific evidence to show what improvements the petitioner has already wrought in his field of endeavor.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not

[3] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.

established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.